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CHRISTOPHER A. PRINE

VIA ELECTRONIC FILING

June 4, 2019

Christopher A. Prine
Clerk, First Court of Appeals
301 Fannin, Suite 245
Houston, Texas 77002

Re: Ricardo Romano v. State
Court of Appeals No. 01-18-00538-CR
Trial Court Case No. 2167075

Dear Mr. Prine:

The parties have filed their briefs, and this case is at issue but has not been submitted. I write this letter pursuant to Texas Rules of Appellate Procedure 2 and 38.7 and respectfully request that the Court grant leave to file it as a pre-submission supplemental letter brief.

Appellant contends that the evidence is legally insufficient to establish that he committed indecent exposure. Specifically, he asserted that he removed his penis in a secluded section of Memorial Park to urinate and denied that he was masturbating. The arresting police officer asserted that he saw appellant masturbating. Appellant has directed the Court to the officer's body camera video recording, which depicts the incident from the officer's perspective. The video demonstrates that the officer could not see whether appellant was masturbating. The Court cannot credit the officer's testimony over what the video actually depicts.

I point the Court's attention to its recent decision, State v. Jerold Jermaine Griffin, Nos. 01-18-00679, -680, & -681 (Tex. App.—Houston [1st Dist.] May 2, 2019, no pet. h.) (not designated for publication). The trial court granted Griffin's motion to suppress evidence, and the State appealed. At issue was whether to credit the testimony of police officers over body camera video recordings of the incident where the videos contradicted their testimony. Justices Hightower, Lloyd, and Kelly concluded that the videos contained the best evidence of what occurred and affirmed the trial court's order suppressing the evidence.

Griffin supports appellant's assertion that the Court should credit the body camera video recording over the officer's contradictory testimony that he saw appellant masturbating.

I appreciate your bringing this letter to the Court's attention.

Sincerely,

/s/ Josh Schaffer
Josh Schaffer
JS/

cc: Cory Stott